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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1989

Addendum

POLAND*

[23 September 1991]

1. This report describes the legislation adopted between May 1990 and September 1991 which is relevant to the articles of the International Covenant on Civil and Political Rights.

Article 2

2. The legislation amending the conditions under which appeals may be brought against any administrative decisions, announced in the third periodic report (CCPR/C/58/Add.10), has been adopted. The Act of 24 May 1990, amending Act No. 34 (Code of Administrative Procedure), (Journal of Laws, No. 34, item 201), contains a comprehensive clause on the introduction of appeals against administrative decisions before the Administrative Court. The few

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* This document contains information supplementary to the third periodic report of Poland (CCPR/C/58/Add.10).

exceptions to that comprehensive rule provided for by the Act, relate to cases in which there are particularly important reasons for declaring an appeal to the Administrative Court inadmissible. The cases in question relate to departmental hierarchy in the State administration units and disciplinary matters. Appeals are also proscribed in cases concerning the issue of visas, the right of asylum, the right of permanent residence and expulsion, although these exceptions do not apply to foreigners legally resident in the Republic of Poland. The Act not only allows appeals to be made to the appeals court against administrative decisions, but also against interim orders made under administrative procedure as well as under administrative enforcement and seizure proceedings.

3. Appeals may also be made to the Administrative Court against decisions taken by the local self-management organs.

4. Some major legislative changes have also been made in the methods of hearing cases of misdemeanours. These changes were made by the Act of 8 June 1990 relating to legislative amendments to the Code of Criminal Procedure, the Code of Procedure in Respect of Misdemeanours and the Labour Code (Journal of Laws, No. 43, item 251). The misdemeanours commissions now operate under the district courts and their activities are monitored by the Minister of Justice, whereas they previously came under the Ministry of the Interior.

5. Moreover, the Act allows a person to appeal to the court for a review of his sentence, and to appeal against a conviction by the court. The provisions hitherto in force did not provide for such a possibility.

6. The report described the significant role played by independent courts in protecting rights and freedoms. Their role was reinforced by the Act of 13 July 1990 establishing appeals courts and amending the Act on the Organization of the Courts of Law (Journal of Laws, No. 53, item 306). The Act introduced a three-tier structure for the ordinary courts (district courts, voivodship courts and courts of appeal) while preserving the two-tier structure of judicial procedure. Ten appeal courts were established. They hear appeals made against judgements in first instance given by the voivodship courts.

7. In addition, the Notaries Act (Journal of Laws, No. 22, item 91) and the Act of 14 February 1991 - provisions introducing the Notaries Act and amending of the Code of Civil Procedure and the Act on Property Registers (Journal of Laws, No. 22, item 92) - extended the jurisdiction of the courts by transferring to them all affairs connected with the maintenance of property registers. Previously such matters came under the competence of the national notaries' bureaux and their transfer to the jurisdiction of the courts is another illustration of the steps taken to strengthen the role of independent courts in the Polish legal system.

8. The new Notaries Act has established a new system of organization for the profession by allowing notarial acts to be drawn up by notaries in private practice acting as public men of confidence. In the next two years, it is planned to eliminate the national notaries' bureaux completely. The new Act also lays down the operational bases for self-management by notaries.

9. The problems of the protection of persons whose rights and freedoms have been violated are dealt with by the Act of 24 January 1991 relating to war veterans and the victims of repression during wartime and the post-war period (Journal of Laws, No. 17, item 75). Such persons are guaranteed protection by State institutions and by local self-management organs in the case of war veterans and the victims of repression by the authorities of the Third Reich or by the authorities of the Union of Soviet Socialist Republics and the Polish communist apparatus between 1944 and 1956. This function is performed by the Department of War Veterans and Victims of Oppression, established by the Act as a central State administrative body.

10. In addition, the Act of 23 February 1991 on the repeal of judgements handed down against individuals victimized for their activity on behalf of the independence of the Polish State (Journal of Laws No. 34, item 149) introduced important legislation relating to persons victimized for their activity on behalf of the independent existence of the Polish State and for their resistance to rural collectivization and the compulsory delivery of agricultural produce. In particular, the Act:

(a) Repeals the decisions taken by the prosecution departments, the courts or by extra judicial bodies during the period between 1 January 1944 and 31 December 1956, or taken after 31 December 1956 if they concern activities pursued between 1 January 1944 and 31 December 1956;

(b) Grants the person concerned by the decision repealed the right to compensation from the Treasury for the damages suffered and compensation for the moral injury caused by the decision; and

(c) Grants the person concerned by the decision repealed the right to restoration of confiscated property, and if this is impossible, the right to compensation in an amount equivalent to the value of the property.

11. In addition to amending the title of the Act, the Act of 4 April 1991 amending the Act on the Central Investigatory Commission into Nazi Crimes in Poland - National Commemorative Institute (Journal of Laws, No. 45, item 195), regulates the prosecution of all crimes against humanity. It also covers crimes committed during the Stalinist period, i.e. acts committed, instigated or tolerated by the communist State authorities during the period up to 31 December 1956 against individuals or population groups. Prescription does not apply to crimes committed during the Stalinist period if they constitute war crimes or crimes against humanity under the terms of international law.

Article 6

12. At the intitiative of the Senate, a bill on the legal protection of unborn children has been submitted to the current Diet to repeal the 1956 Act on admissible termination of pregnancy and to ban such termination. Examination of the bill by the legislature gave rise to a divergence of opinions. On 17 May 1991, the Diet adopted a resolution urging the Government to prepare and submit to the Diet a comprehensive scheme designed more

effectively to protect mothers, children and the family together with proposals for the repeal of the Act on admissible termination of pregnancy, the preparation of new criminal laws in that sphere and the amendment of the Act relating to the medical profession.

Article 12

13. The amendment of the legal provisions relating to passports, mentioned in the third periodic report, was implemented with the adoption of the Act of 29 November 1990 on passports (Journal of Laws, 1991, No. 2, item 5) which stipulates that every citizen has the right to be issued with a passport. The right may be withdrawn or restricted only in the circumstances specified by the Act, and an appeal may be made to the Administrative High Court against any such withdrawal or restriction.

14. Issue of a passport may be refused pursuant to a request:

By the court dealing with criminal or civil proceedings under way against an applicant for a passport;

By the procurator-general in the case of an applicant for a passport against whom proceedings have been initiated for the transfer of a criminal prosecution in respect of an offence committed abroad; or

By the organ responsible for preparatory or enforcement proceedings against an applicant for a passport involved in a criminal case relating to an offence for which charges have been brought by the State or in a tax case involving criminal proceedings.

15. In addition, the Act specifies those cases in which the issue of a passport may be refused. This concerns individuals in respect of whom there are good grounds for believing that, if they leave the country, they will not fulfil their legal commitments (for example, payment of alimony for children), persons convicted by orders issued having the force of res judicata for offences committed abroad, if the offences constitute offences under Polish criminal law, and finally persons in respect of whom information has been received, through the channels provided for in international conventions, concerning the commission, while abroad, of a serious or minor offence committed for profit.

16. The Act has introduced an essential amendment concerning the bodies competent to issue passports. Passports are no longer issued in Poland by the police, but by the voivodships, which are also competent to issue permanent residence permits to foreigners.

17. A passport, which is valid for 10 years, remains in the possession of its holder. In urgent cases, related to illness, or to the burial of a family member or if a seriously ill person requires medical treatment, the period required for the issue of a passport is reduced to a maximum of three days.

18. The Act also specifies cases in which a passport may be cancelled. Mandatory cancellation applies if there are circumstances that would constitute grounds for a mandatory refusal to issue a passport. In addition, it is possible to cancel a passport if, pursuant to the Act, there are grounds on which it would be possible to refuse its issue.

Article 13

19. On 2 September 1991, the Republic of Poland acceded to the 1951 Convention relating to the Status of Refugees.

Article 14

20. The rights referred to in article 14 of the Covenant are affected by the amendments described in the section concerning article 2 of the Covenant.

Article 18

21. The right of parents to educate their children in accordance with their religion, provided for by the Act of 17 May 1989 on guarantees of freedom of conscience and religion (Journal of Laws, No. 29, item 155) was confirmed by the Instructions issued by the Minister of Education on 3 August 1990 and 28 August 1990 relating to the restoration of religious education in schools in the 1990/91 academic year. The principal basis for the Instructions is the recognition that religion in schools constitutes a valuable factor in the educational process and that religious instruction can be carried out only in an atmosphere of tolerance, free from any form of religious discrimination. Accordingly, neither children receiving religious instruction nor those not receiving such instruction may be discriminated against by school employees, other pupils or the parents of other pupils. The educational system guarantees religious instruction for all religious denominations and faiths on the basis of the principle of equality. Religious instruction is not compulsory.

22. No case of abuse of or discrimination against pupils because of their religion or lack of belief has been reported to date.

23. The teaching of religion in State schools gave rise to a case before the Constitutional Court concerning the legality of the Instructions. This case was settled by the Constitutional Court in its decision No. I.11/90, given on 30 January 1991, whereby the Court stated that:

> The two Instructions of the Minister of Education quoted above were not incompatible with article 2 of the Act of 15 July 1961 on the development of the system of education and training (Journal of Laws No. 32, item 160, as subsequently amended); and that
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> The two Instructions were in conformity with the Constitution of the Republic of Poland, the Act of 17 May 1989 on guarantees of freedom of conscience and religion (Journal of Laws, No. 29, item 155, as subsequently amended) and the Act of 17 May 1989 on the attitude of the State towards the Roman Catholic Church in Poland (Journal of Laws, No. 29, item 154, as subsequently amended).

24. With respect to the legal guarantees for the freedoms covered by article 18 of the Covenant, mention should also be made of the Act of 12 September 1990 on institutions of higher education (Journal of Laws, No. 65, item 385) which provides that institutions of higher education shall be organized and function on the basis of the principles of freedom of scientific research, freedom of artistic creativity and freedom of teaching.

Article 19

25. An essential modification of the Polish system of media activity was introduced by the Act of 23 November 1990 on communication (Journal of Laws, No. 86, item 504). It establishes the possibility of granting to private persons authorization to use specialized equipment for the broadcasting of radio and television programmes.

26. In practice, this permits a private person freely to broadcast his (radio) programmes. Such a possibility has also been established for the churches and other religious denominations.

Article 21

27. The legal regulations submitted in the report concerning the right of assembly have been replaced by the Act of 5 July 1990 on public meetings (Journal of Laws, No. 51, item 297), which has introduced a legal system in keeping with article 21 of the Covenant.

28. Under this Act, the right to hold meetings is subject only to the restrictions specified by the law which are necessary for the protection of State security, public order, health or morals, or the rights and freedoms of others. The Act has repealed the regulation hitherto in force whereby it was necessary to obtain authorization from an administrative body to organize a meeting, without any possibility of appeal to the courts. The present Act provides solely that the administration of the commune must be informed of the organization of a public meeting. This administration can prohibit such a meeting only in the specific cases indicated in the Act, namely when:

(a) The purpose of the meeting or of its organization is contrary to the Public Meetings Act or violates the provisions of the Penal Code; or

(b) The organization of the meeting may constitute a serious danger to human life or health or to property.

29. The aforesaid Act includes the possibility, for either the organizers or the participants, to appeal against a decision banning a meeting, solely as specified in the Act. In such a case, the appeal must be made to the Administrative High Court.

Article 22

30. The Act of 28 July 1990 on political parties (Journal of Laws, No. 54, text 312) is a legal guarantee of political pluralism in Poland. Registration of the political party in the register maintained by the Warsaw Voivodship Court is the sole condition for acquiring legal personality. A political

party can be formed by a group of not less than 15 persons. Activities by the party can be banned by the Constitutional Court if such activities are directed towards the overthrow by violence of the State system or if the party uses violence in public life.

31. Problems connected with the activities of the trade unions have been newly regulated by the Act of 23 May 1991 on trade unions (Journal of Laws, No. 55, item 234) which repealed the Act of 8 October 1982 on trade unions (as amended by the Act of 7 April 1989 amending the Trade-Union Act) (Journal of Laws, No. 20, item 105) described in the third report.

32. Article 1 of the new Trade-Union Act states that a trade union is a voluntary, self-governing organization entitled to represent and defend the vocational rights and interests of workers. The Act guarantees the independence of trade unions vis-à-vis employers, the State administration, local self-management organs and other organizations. A trade union is established by virtue of a resolution adopted by a group of not less than 10 persons who are competent to found a union. Within 30 days of the establishment of the union, a formal request for registration must be submitted to the competent voivodship court.

33. The trade union acquires legal personality on the day of its registration. Registration may be refused by the court if the formal conditions prescribed by the Act have not been fulfilled or if the statutes of the trade union are incompatible with the provisions of the Law. Several trade unions may operate in a single enterprise. State bodies and local self-management organs, as well as employers, are bound to treat all trade unions equally.

34. Trade unions may form national associations (federations) of trade unions. They may also join or establish international workers' organizations.

35. Under the Act, persons doing their military service, civil defence employees and career members of the armed forces cannot establish or join trade unions or participate in trade-union activities. The Act of 23 May 1991 on the settlement of collective disputes (Journal of Laws, No. 55, item 236) is also closely linked with trade-union problems. This Act specifies the manner in which collective disputes between employees and their employer are to be settled, stating that strike action is the ultimate means of settling the dispute.

36. The Act deems unacceptable work stoppages resulting from the proclamation of a strike at work stations or on equipment or in installations where such a work stoppage creates a danger to human health or life or to the security of the State.

37. The organization of a strike is unacceptable in police units, the armed forces, the prison service, the frontier-protection service and the fire service. Workers employed in State organs, in the State administration, in local self-management organs, in the courts and in the public prosecutor's office are also deprived of the right to strike.

38. During the period of a strike organized in conformity with the provisions of the Act, the employee retains his right to social-insurance benefits and to all others resulting from the work contract, other than the right to be paid.

39. Workers who are not entitled to strike can make use of other forms of protest which do not endanger human health or life, without a work stoppage, provided that the legal order in force is respected.

40. Another Act of 23 March 1991 should also be mentioned, namely, that on employers' organizations (Journal of Laws, No. 55, item 235) which provides that employers may, without prior authorization, establish associations as they see fit, as well as federations and confederations of such associations.

41. The Act of 25 October 1990 on the restoration of property confiscated from trade unions and social organizations as a result of the imposition of martial law (Journal of Laws, No. 4, item 17) provides that all items being the property of trade unions and social organizations that were confiscated from them during the period of martial law (13 December 1981-22 July 1983) must be restored to them and, in the event of such property having been destroyed or damaged, compensation must be paid.

42. Proceedings for the restoration of property take place before the Social Claims Commission which gives a ruling on the subject having the authentic force of an administrative decision, which can be appealed to the Administrative High Court.

Article 23

43. Resolution No. 53/91 of the Council of Ministers of 2 April 1991 appointed a Government Plenipotentiary responsible for problems of women and the family with the task of coordinating activities dispersed within various jurisdictions concerning the protection and representation of the rights of women, the family, children and young people.

Article 24

44. By the Act of 21 September 1990 on the ratification of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 (Journal of Laws, 1991, No. 16, item 71), the Diet gave its approval for the ratification by the President of the Republic of Poland of the above-mentioned Convention. The Convention was duly ratified by the President of the Republic of Poland and, consequently, Poland has been a party to that Convention since 7 July 1991.

Article 25

45. The right to free participation by citizens in public life was achieved by the fully democratic election - the first since 1945 - of the President of the Republic of Poland, which was organized under the Act of 27 September 1990 on the amendment of the Constitution of the Republic of Poland and the Act of 27 September 1990 on the election of the President of the Republic of Poland (Journal of Laws, No. 67, item 398).

46. This process will be completed by the elections to the Diet and the Senate, scheduled for 27 October 1991, which will be free and fully democratic under the new electoral laws, namely, the Act of 10 May 1991 concerning elections to the Senate of the Republic of Poland (Journal of Laws, No. 58, item 246) and the Act of 28 June 1991 concerning elections to the Diet of the Republic of Poland.

47. The election of the deputies and senators will take place by universal, direct, equal and free suffrage through a secret ballot. Persons deprived of public rights by a judicial decision having the force of res judicata or deprived of electoral rights by a decision of the State Court as well as persons partly or wholly interdicted as a result of a judicial decision having the force of res judicata because of a mental illness or infirmity will be without electoral rights. The elections will be organized by electoral commissions made up of judges. Candidates for the posts of deputies and senators may be proposed by electors, parties or political organizations as well as by social organizations which establish electoral committees at the national and local levels for this purpose. The validity of the election of the deputies will be certified by the Diet and that of the senators by the Senate, after consideration by the Supreme Court of any objections to the election of a deputy or senator.

Article 26

48. The Act on the employment and vocational rehabilitation of handicapped persons, adopted by the Diet of the Republic of Poland on 9 May 1991 (Journal of Laws, No. 46, item 261) should facilitate the process of integrating this group of persons into society by establishing adequate conditions for their social and vocational functioning. Under this Act, resolution No. 112/91 of the Council of Ministers was adopted on 6 August 1991 establishing the post of Under-Secretary of State responsible for the problems of handicapped persons, whose main duty is to coordinate actions concerning the conditions of social and vocational life of such persons.

49. Lastly, it should be mentioned that the preparatory work for the ratification by Poland of the Optional Protocol to the International Covenant on Civil and Political Rights is well advanced.